

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 321 of 1993

WITH

CIVIL APPLICATION NO.3045 OF 1993

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

LATIKA WIFE OF KHILCHAND KASHIRAM

Versus

KHILCHAND KASHIRAM ZOPE

Appearance:

MR AR LAKHIA for Appellant-Absent

MR CM KELLA for Respondent-Absent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 14/02/97

ORAL JUDGEMENT

1. This is an appeal from order under Order 43, Rule 1, CPC, filed by the wife, who was the original opponent in a divorce petition filed by the respondent-husband.

The present appeal challenges the order of rejection passed by the trial court, for setting aside the so-called exparte decree for divorce on an application under Order 9, Rule 13, CPC.

2. This matter has been on the final hearing board since 28th January 1997, and although the said matter was called out on a number of occasions, learned counsel for the respective parties have remained continuously and consistently absent.

3. However, from the record it is found that a settlement has been arrived at between the parties on 3rd February 1995, and as per the settlement the appellant-wife has agreed to accept Rs.25000/- as permanent alimony from the respondent-husband in full and final settlement of all her claims against her husband.

4. As a result of this settlement, the respondent-husband has filed an undertaking in this court dated 4th February 1995, whereby he has made payment of Rs.5000/- towards the aforesaid amount of Rs.25000/under the settlement, and has undertaken to pay the balance of Rs.20000/- in two instalments of Rs.10000/- each, on 3rd May 1995 and 3rd August 1995.

5. From the aforesaid undertaking it is seen that apart from Rs.5000/- paid on 4th February 1995, the first instalment of Rs.10000/- was payable on or before 3rd May 1995. Consequently the appellant-wife has filed an undertaking on oath dated 3rd May 1995, setting out the fact that she had instructed her advocate on 3rd February 1995 and on that basis the entire dispute between the parties was settled for a total sum of Rs.25000/- (as stated hereinabove), that she had received Rs.5000/- on 4th February 1995, and has received a further amount of Rs.10000/- on that day (i.e. on 3rd May 1995). This undertaking further goes on to state that, subject to the condition that the balance amount of Rs.10000/- being paid to her on or before 3rd August 1995, the parties shall not proceed with any litigation pending between them and their families, etc, and on the last instalment being paid by due date, the dispute between the parties would come to an end. This undertaking of the wife on oath, dated 3rd May 1995, is also on record.

6. As stated hereinabove, learned counsel for the respective parties have chosen to remain absent.

7. In view of this state of the record, it appears that the last instalment of Rs.10000/- due on or before

3rd August 1995 must have been paid by the respondent husband to the appellant-wife, and hence the lack of interest in the present matter on the part of both the parties. In any case, since a long time has elapsed, I see no reason to keep the present matter alive, since the interests of both the sides are protected by the respective undertakings on oath having been placed on record.

8. In the premises aforesaid, this appeal is treated as disposed of with no order as to costs. It is, however, clarified that in case of difficulty, the parties shall be at liberty to take such action as may be necessary, on the basis of the respective undertakings on record.

9. As regards the Civil Application, rule is discharged with no order as to costs.
